IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.8148 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Mr.R.M.Agarwal with Mr.N.V.Bandiwadekar, for the Petitioner
Mrs.S.S.Bhende, A.G.P. for the Respondent No.1 and 2.
Mr. R.S. Apte with Mr. A.A. Garge, for Respondent No 1 and 2.
Mr. M.V. Limaye, for Respondent No.3.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.
DATED : 16TH FEBRUARY, 2005

P.C. . Learned Counsel for the petitioner seeks oral leave to amend the prayer clause (j) in terms of what is set out in paragraph 5 of the petition. Leave granted. Amendment to be carried out within ten days from today.

2 Rule. Heard forthwith.

3. The case of the petitioner herein is that by order dated 20th November, 2003 she has been practically declared as surplus without the approval of the respondent No.2. The further grievance is that there is unpaid salary. As such relief has been sought in terms of prayer clause (j).

4. On behalf of the Respondent management

their learned Counsel points out that the order dated 20th November, 2003 is not an order declaring surplus, but merely a transfer from one division to another division. It is her further contention that the appointment of the petitioner was not done by the management, but was unilaterally done by the Head Master.

5. We have heard learned Counsel for the parties including respondent No.5. From the documents on record we find that the appointment of the petitioner was approved on probation by letter dated 22nd January, 2003 with effect from 1st November, 2002. In other words the petitioner has been appointed against an approved post in a recognised school which is aided. It is true that looking at the letter dated 20th November, 2003 it shows that it has merely transferred from one division to another division. However, in the affidavit of the Deputy Education Officer dated 6th July, 2004, it is pointed out that there is no recognition and sanction of the division in the school and that the management has transferred the petitioners to non-existing, non-available and unaided division in the school.

6. In answer to the contention on behalf of the Respondent management their learned Counsel points out that by natural growth they are entitled to an additional division. They have already applied for recognition and approval of the said division before the Respondent authorities. That has yet to be disposed of. It is further set out that it is within the jurisdiction of the management to transfer the petitioner in the same school.

7. The contention of the respondent No.5 as to her status really cannot be gone into considering today there is an approval for the appointment to the post by Respondent No.2 in so far as the petitioner is concerned.

8. The averment by the petitioner that she has not been paid the salary as set out in the petition and as prayed in the petition has also not been controverted. Considering the above the petition can be disposed of by issuing the following directions:-

(i) Even if the petitioner is transferred from one division to another division in the same school the petitioner will be paid

the salary as a teacher duly appointed and approved by Respondent No.2 in the pay scale of approved teacher.

(ii) In the event the post is declared surplus the petitioner's seniority in the school and the subject that she is teaching will be borne in mind and the petitioner can be declared surplus only after approval by Respondent No.2.

(iii) The status of the petitioner at this stage cannot be altered considering her approval. If the respondent management contends that her appointment was not regular it is for the respondent management to write to the respondent No.2, who after hearing the petitioner and respondents will pass appropriate orders according to law.

(iv) Considering the averment that he has not been paid salary as set out in paragraph 5 of the petition from 10th July, 1999 in the pay scale the petitioner will have to be paid in the pay scale for the unpaid period within four months from today.

(v) It will be open to the management, if they are entitled to reimbursement of grant

from the respondent NO.2 to submit the pay bills and it is for the respondent No.2 to thereafter act according to law.

(vi) Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)